

1 before you left?

2 A. I don't remember.

3 Q. Okay.

4 Then what happened?

5 A. I came back and Judge Cohen said, "We're waiting
6 for Mrs. Cohen. She is up in Judge Gates' division with a
7 hearing."

8 And I said to him, "Why?"

9 And he said, "We're going to have an evidentiary
10 hearing on this."

11 And I said, "Why?" I said, "You can't." I said,
12 "Either it's facially sufficient or it's not."

13 And he said, "What do you mean?"

14 And this is the best of my memory. I said,
15 "Well, if you find that my motion is true and factual
16 based on the testimony, you have to grant it. If you find
17 that I'm not credible, then it backs the facts of it and
18 you take your wife's side."

19 And then he made a joke, "Well, I'll guess I have
20 cold dinner that night."

21 And I said, "I'm objecting to the hearing."

22 He said, "No, we're going to have it," and had me
23 wait until she came back down." That wasn't in there
24 because I don't think it was ever ordered.

25 Q. That would have been --

1 A. Prior to the hearing, correct.

2 Q. Was he rude or offensive to you?

3 A. No, it just seemed a little curt.

4 Q. But was he aggressive, or nasty, or raising his
5 voice?

6 A. No, it just seemed curt.

7 Q. Did Dale Cohen ever raise his voice at you?

8 A. During the Butler hearing.

9 Q. So he told you to come back and you came back,
10 right?

11 A. Yes.

12 Q. Then what happened?

13 A. He called his wife as a witness. And I was up at
14 the podium.

15 Q. Is the transcript accurate?

16 A. To the best of my memory, yes, it is.

17 Q. Because, as we've all been, we're lawyers, if
18 it's transcribed, we don't have to fight about it.

19 But during that hearing, did he raise his voice?

20 A. No.

21 Q. Did he ever stand up --

22 A. No.

23 Q. -- at the bench?

24 A. No.

25 Q. Did he ever go off the record?

1 A. Not that I remember, no.

2 Q. Did he ever threaten you?

3 A. No.

4 Q. Okay.

5 And he did grant the motion, didn't he?

6 A. Yes.

7 Q. Okay.

8 During that hearing, there was some discussions
9 about the affidavit -- well, the actual whole motion is an
10 affidavit, right? There was discussion?

11 A. Whatever the record is is what it is. I don't
12 remember word for word.

13 Q. Okay.

14 Were you aware of the law of recusal motions of
15 whether there should be a hearing or not? Have you read
16 all the cases on that?

17 A. No.

18 Q. Were you aware a judge could have a hearing if he
19 really wanted to?

20 A. No.

21 Q. But you believed that it's very simple, if it's
22 facially sufficient, either grant it or deny it and move
23 on, right?

24 A. Correct.

25 Q. And if he denied it, what were you going to do?

1 A. I don't know.

2 Q. Okay.

3 What was the purpose of that hearing?

4 A. I don't know. That, you would have to ask Judge
5 Cohen. I've no idea.

6 Q. Did you believe it was -- that he only had that
7 hearing for the purpose of intimidating you?

8 A. It felt like it. At a point, it did, or to mock
9 me. It wasn't done -- it didn't feel comfortable to be
10 there to have a judge calling his wife and questioning his
11 own wife and questioning your credibility verses his
12 wife's in an open courtroom.

13 Q. I think we all now know that was not the right
14 procedure to handle this, don't we?

15 A. Correct.

16 Q. And you can -- trust me, that's my position, but
17 how did that -- how did that advance the interest of Mardi
18 Levey Cohen? Do you know any way that having that hearing
19 advanced her interest?

20 A. I don't know. But all I know, I felt like I was
21 being intimidated or picked on by them or the judge to put
22 his wife on there to question my own credibility.

23 Q. But, you know, I'm reading from the charges --

24 A. Okay.

25 Q. -- and you know how sometimes as lawyers, when

1 we're defending somebody, we really only have to defend
2 what they've charged?

3 A. Uh-huh.

4 Q. That's what I'm here doing. So here's the
5 question: How did the hearing, the way the hearing was
6 handled, advance the interests of Mardi Levey Cohen? Do
7 you know?

8 A. No. But at the time of the hearing, I was
9 supporting Geoffrey Backman, who was running for judge,
10 and he happened to be in the same race, Group 1, for
11 county court seat that Mardi Anne Levey had filed in.

12 Q. But how did that, having that hearing advance the
13 interest of Mardi? You don't know any way it did or
14 didn't, do you?

15 A. I don't know what they were thinking.

16 Q. By having that hearing, did Judge Cohen have any
17 personal gain? Did he make money? Did something come to
18 him? Was there any personal gain to Judge Cohen by having
19 that hearing?

20 A. I have no idea.

21 Q. How about for Mardi, any personal gain?

22 A. I think it made her feel good that I was being
23 attacked by her husband in an open courtroom.

24 Q. But you don't know, do you?

25 A. I don't know.

1 Q. Okay. The hearing speaks for itself. He recused
2 and then the client moved on, right?

3 A. Yes.

4 Q. Now, did you that day file some other motions on
5 another client at the same time?

6 A. I don't believe it was the same day.

7 Q. If you look at the different motions, they all
8 look like you used the word processor. You basically --
9 I'm not insulting you by this -- you copied and pasted for
10 the other people, which we all do.

11 Did you ever make any changes in these motions
12 that --

13 A. Yes. Leon Butler's motion, which from what I
14 remember, was the next one that I filed.

15 (Thereupon, a discussion was held off
16 the record, after which the following
17 proceedings were had:)

18 BY MR. CATALANO:

19 Q. Okay.

20 So you filed the other one and you added the
21 language --

22 A. I added the information, it's in the recusal
23 motion, about the hearing. I don't remember the exact
24 verbiage I put, but I remember specifically putting in
25 that the judge had the hearing on that. Whatever the

1 motion says is what I put in there, but I specifically
2 changed it between Gibbs and Butler.

3 Q. Okay. On Rigby, I've got it here because an
4 earlier deposition --

5 A. Rigby is the same as Gibbs.

6 Q. Okay.

7 You only filed one on Rigby, right?

8 A. If he had one or two cases, I don't remember.

9 Q. If he had one or a hundred, it would all be filed
10 at one time, right?

11 A. Yes.

12 Q. And the same with all the other defendants,
13 right?

14 A. Correct.

15 Q. I do notice that there's two identical motions
16 with different case numbers on Gibbs. That's because he
17 had the 2006 and the recent case, right?

18 A. Yes.

19 Q. So let's go to Rigby. It happens to be JQC No. 6
20 from earlier today.

21 A. Okay.

22 Q. Okay.

23 Who -- you notarized his signature, right?

24 A. Yes.

25 Q. Who is Allen Williams?

1 A. He's a notary -- it's Valerie Small Williams'
2 husband, and he's a notary.

3 Q. In your office?

4 A. He's a bondsman in our office, yes.

5 Q. Now, this certificate of service on this is the
6 18th on Rigby, which is JQC 6, is November 18, 2008.
7 Okay.

8 That's when you filed this, right?

9 A. Yes.

10 Q. Now, would you have filed that plus or minus
11 one day of that?

12 A. I don't remember.

13 Q. Well --

14 A. If it's -- the day that I wrote there is the day
15 that we take it over.

16 Q. Have you ever left something in the bin or in the
17 office where you signed the certificate of service for,
18 let's say, January 3rd, which is a Friday, but, whoops,
19 you said you hand-delivered it, but, whoops, it sat there
20 and didn't get filed to Tuesday? Did you ever do that?

21 A. It may have been.

22 Q. Okay.

23 If do you that, do you have the habit like I do
24 of putting a note on it or scratching "actually filed" so
25 it doesn't look deceiving?

1 A. I don't remember.

2 Q. Okay.

3 But you always intend to file about, plus or
4 minus the day when you said so; correct?

5 A. Correct.

6 Q. So that's Rigby.

7 Now, we've got a guy named Leon Butler.

8 A. Yes.

9 Q. Now, did we ever have a hearing on this one?

10 A. That's the hearing that the transcript does not
11 exist.

12 Q. I want to talk to you Leon Butler.

13 The court reporter that apparently had all kinds
14 of mechanical difficulties who used to be a better
15 mechanic, I guess, did you ever work with her before?

16 A. Yes.

17 Q. Did she do your depositions for a while?

18 A. Not me personally. What she was was a court
19 reporter that worked for court services, or whatever they
20 had when it was the old SPD. She worked when they had the
21 group of court reporters that worked on the fourth floor.

22 Q. In the pool?

23 A. In the pool. That's where she worked.

24 Q. But had you done business with her?

25 A. Not personally, ever.

1 Q. Did you know her personally?

2 A. No.

3 Q. And you found out after the hearing that her
4 transcript was gone?

5 A. Over a week later.

6 Q. Okay.

7 Did you ever inquire into what kind of machine
8 was used and whether there was an electronic copy?

9 A. No.

10 Q. And do you remember something about her tape
11 recording as well?

12 A. Yeah, she had a tape recorder and a --

13 Q. Transcript machine?

14 A. Yes, she had one of those.

15 Q. Do you believe in your heart of hearts that madam
16 court reporter really did have major mechanical problems
17 or she ditched this on purpose?

18 A. I don't know.

19 Q. Do you know of any reason why she would have
20 ditched this to keep anyone from getting a copy?

21 A. I don't know.

22 MR. POPE: We're not making an issue of
23 that.

24 MR. CATALANO: No; but honestly, we wish
25 we had the transcript.

1 MR. POPE: We do, too. I, frankly, just
2 to let you know, I came down here and served
3 an investigative subpoena on her and took her
4 deposition. And as a consequence of that, I
5 convinced -- I was convinced that it was in
6 fact a mechanical screw up.

7 BY MR. CATALANO:

8 Q. I just wondered, because I knew that you had some
9 relationship there. You know, we live in a world where
10 everyone thinks we're conspirators. You know what I mean?
11 Do you agree with me that no matter what we do, somebody
12 wants to criticize us?

13 A. All the time.

14 Q. I'm in the same world you are, but --

15 MR. CATALANO: Oh, by the way, is that
16 deposition going to be turned over?

17 MR. POPE: I don't believe it was ever
18 transcribed.

19 MR. CATALANO: We'll follow up on it.

20 MR. POPE: You can. You can. I don't
21 believe I had it transcribed because at the
22 conclusion -- I took the deposition of her
23 and her boss, who runs the court reporters'
24 office there, and very thorough, it was
25 actually a sworn statement is what it was,

1 and they persuaded me that it was a
2 mechanical failure.

3 MR. CATALANO: I just don't want this to
4 come back and bite my client in the backside
5 two months from now.

6 MR. POPE: I am not making an issue out
7 of the inability -- I'm not blaming him at
8 all. And I'm not blaming him.

9 MR. CATALANO: Dale Cohen or Steve
10 Melnick.

11 MR. POPE: And I'll agree with you on
12 that.

13 MR. CATALANO: I'm going ask Steve
14 Melnick.

15 BY MR. CATALANO:

16 Q. Do you know of any reason those machines broke or
17 she was not able?

18 A. No.

19 Q. Did you ever order those transcripts?

20 A. As soon as the hearing was over, I said to her,
21 "I want these immediately," right to her face.

22 She said, "I'll get them to you."

23 Q. Did you have good credit with her?

24 A. With their company always, yeah.

25 Q. Because some court reporters tell me they won't

1 transcribe for some lawyers because they don't pay on
2 time.

3 A. I pay the bills the day I get them.

4 Q. Because I've heard lawyers say, "I want it right
5 now," and the court reporter says, "No, you give me a
6 deposit."

7 A. Never had that.

8 Q. You don't have a deposit issue with them?

9 A. No.

10 Q. So to the best of your knowledge, as Mr. Pope
11 said, this is truly a mechanical screw up?

12 A. Correct.

13 Q. Okay.

14 So let's talk about Leon Butler. You filed a
15 motion, which is JQC 3 that we entered today, and it's
16 very, very similar, except it adds the extra language,
17 right?

18 A. Correct.

19 Q. Now, you cite in line 19 of this McQueen versus
20 Roy from the Third DCA in 2000 even.

21 You ever read that case?

22 A. Yes.

23 Q. How long ago did you read it?

24 A. When I did the motion, about year-and-a-half ago.

25 Q. Now, this is a dumb question, but I'm going to

1 look at the front page of this, and it says "State of
2 Florida verses Leon Butler."

3 Who are the parties in State versus Butler?

4 A. State of Florida and Leon Butler.

5 Q. And it says in page -- line 19, in McQueen, the
6 Court states the recusal is appropriate when one of the
7 parties has dealings with a relative of the Court, right?

8 A. Okay.

9 Q. So in this case, the party -- no party had
10 dealings with a relative of the Court, right?

11 A. It depends. I think that Judge Cohen had
12 dealings with one of the parties, his wife, and his wife
13 had the conflict with me.

14 Q. But you see what I'm getting at, right?

15 A. No.

16 Q. Okay.

17 Mr. Butler is a party and the State's a party.
18 The State had no -- had no issues with relatives of the
19 court, right? The state attorney was not related to Judge
20 Cohen, right?

21 A. Correct.

22 Q. And Leon Butler was not related?

23 A. Correct.

24 Q. And you sat down with Mr. Butler and explained
25 all this?

1 A. I read it to him and explained it to him.

2 Q. And he did get recusal?

3 A. After the hearing.

4 Q. That's the hearing that wasn't transcribed?

5 A. Correct.

6 Q. And where did that case go?

7 A. Judge -- I believe it was Milly Rodriguez Powell.

8 Q. Did you resolve it okay?

9 A. Yes.

10 Q. Was he in custody?

11 A. No, he was out of custody.

12 Q. How did that hearing happen? You were summoned
13 or was it on calendar already or did you --

14 A. I was summoned to come to the courtroom to come
15 back and I came back.

16 Q. This is the hearing that we have no transcript?

17 A. Correct.

18 Q. Have you seen any filings that Judge Dale Cohen
19 has filed with the JQC explaining his version of what
20 happened that day?

21 A. No.

22 Q. And the prosecutors -- you know there were other
23 people in the courtroom. There were prosecutors, maybe
24 public defenders, a clerk, a bailiff, and a court
25 reporter?

1 A. Yes.

2 Q. Have you seen any of their transcripts or
3 statements they had given?

4 A. No.

5 Q. Okay, so then, I'll give you the floor. What
6 happened?

7 A. Judge had a hearing on it and he, to the best of
8 my memory, swore in Mr. Butler and began to question him
9 about my conversations with Mr. Butler. And this -- his
10 voice was raised. And I objected to this as to
11 attorney-client privilege. And he said, "You have no
12 privilege in my courtroom. There is no attorney-client
13 privilege. I want to hear from him."

14 Q. In his courtroom?

15 A. Yes.

16 Q. Okay.

17 Now, are you aware of the law of attorney-client
18 privilege when you ask someone questions about something
19 they swore to in an affidavit?

20 A. No.

21 Q. Okay.

22 And you know that attorney-client privilege can
23 be waived, can't it?

24 A. By the client.

25 Q. Right. But it also can be waived by pleadings

1 and positions people take. Are you aware of that?

2 A. Yes.

3 Q. Have you had anybody file a Rule 3.850 against
4 one of your dealings or one of your cases where they have
5 alleged you were ineffective assistance?

6 A. From prison, yes.

7 Q. And are you aware that everything you said and
8 did with that client and everything that client said and
9 did, all those privileges have to be waived for the Court
10 to rule on it?

11 A. I learned that, yes.

12 Q. When did you learn that, after this hearing or
13 before?

14 A. No, it was -- I don't remember when we had a
15 3.850 hearing.

16 Q. But you had to sit there and testify?

17 A. Yes, I did.

18 Q. Not fun, is it?

19 A. It was part of my job.

20 Q. Okay.

21 But you learned then that that is a waiver of a
22 privilege, otherwise the Court could never get to the
23 truth of the issue, right?

24 A. Correct.

25 Q. You understand you filed an affidavit. I think

1 you personally notarized the defendant's signature, right?

2 A. Correct.

3 Q. This is looking at JQC No. 3. And he alleged
4 certain factual things in this affidavit, right?

5 A. Yes.

6 Q. Now, Judge Cohen never asked the defendant,
7 excuse me, any questions that went outside of the issues
8 in this affidavit, did he?

9 A. Yes, he did. He asked me what we were talking
10 about. He said, "What did you talk about with
11 Mr. Melnick," and that's what he said.

12 Q. About this case?

13 A. He just said the question: "What did you and
14 Mr. Melnick talk about?"

15 Q. Did he say when?

16 A. He never specifically said. No, he never asked
17 what date. He didn't say, Did you talk to him on this day
18 or that date. There was never a date, specific time
19 mentioned.

20 Q. I will agree with you, that's an open question,
21 right?

22 A. Yes, it is.

23 Q. Did you object on attorney-client privilege?

24 A. Yes, I did.

25 Q. Did Mr. Butler answer the question and go outside

1 the parameters of what was in this motion, like about
2 fees, or about, you know, whether I'm guilty or innocent
3 or something --

4 A. Mr. Butler was very scared and intimidated at
5 that point in time because he was having a judge raise his
6 voice at him. He's standing there in a courtroom scoring
7 mandatory prison at that point in time on a case. And he
8 was -- he's not the most educated man; he can barely read.
9 I had to read him the recusal motion. And he just was
10 stammering, either things, "I don't remember, I don't
11 remember," things like that.

12 Q. You just read it to him five or ten minutes ago,
13 didn't you?

14 A. Yes.

15 Q. So ten minutes later, he was of that diminished
16 ability to remember that he couldn't remember these facts?

17 A. I don't know if it's diminished ability or just
18 having a judge in a court of law questioning you, raising
19 your voice at you when you're a defendant when you're
20 facing a charge where you know you score prison, and here
21 you have a judge questioning you. And if you're not
22 normally in court and know how to -- not a professional
23 witness, you can just shut down.

24 Q. And -- but isn't it a fact that Mr. Butler could
25 not remember these facts when the Judge asked him these

1 questions?

2 A. I don't know what Mr. Butler could remember or
3 not. It appeared to me he just shut down totally. He
4 didn't remember anything.

5 Q. But do you realize from the people sitting across
6 the courtroom, he just signed an affidavit, and now he
7 says, I don't know what you're talking about, basically?

8 A. That isn't what he said, "I don't know what
9 you're talking about." From what I remember him saying,
10 "I don't remember. I don't remember."

11 Q. And did he end up in prison?

12 A. No, he didn't.

13 Q. Was he a convicted felon at the time?

14 A. Yes, he was.

15 Q. And he had been to prison before?

16 A. To the best of my memory, yes.

17 Q. What was he charged with?

18 A. I don't remember.

19 Q. At the end of the hearing, the Judge did grant
20 the recusal, right?

21 A. Yes, he did.

22 Q. Did you ever tell Mr. Butler by getting -- by you
23 being retained in this case, you have a chance of getting
24 rid of Judge Cohen?

25 A. No, that's not the verbiage I used.

1 Q. Did you ever tell him anything to the nature of
2 by having you as the lawyer, Judge Cohen would be off the
3 case and somebody else who might be more lenient that
4 might be on the case?

5 A. No, because he scored mandatory prison, so it
6 really wouldn't have matter.

7 Q. Except that's the bottom of the guidelines,
8 right?

9 A. Yes.

10 Q. Mr. Pope doesn't do what we do for a living. And
11 since Jeb Bush, now we have this wonderful law that the
12 bottom of the guideline is the bottom and the top is the
13 ceiling, right?

14 A. That was the same at that point in time, too.

15 Q. Tough world we live in for defense lawyers.
16 Because if you went to trial, the judge had discretion to
17 blow you away; you couldn't stop him, right?

18 A. Correct.

19 Q. Before that, we had a top of the guidelines; do
20 you remember?

21 A. Yes.

22 Q. Thanks to Jeb, no more.

23 So a judge has the ability to give quite a heavy
24 sentence, if they want to; right?

25 A. Correct.

1 Q. Some judges after trial do that all the time,
2 don't they?

3 A. I'm sure some do.

4 Q. Anything else? Tell me what you remember about
5 the hearing. The floor is yours.

6 A. We had the hearing, and Judge Cohen -- I
7 remembered I was getting loud, too. He was getting loud
8 at me. And it was back and forth. And I said to him -- I
9 remember, he said, "This sound like a bar complaint." And
10 I said, "Are you threatening me with a bar complaint," and
11 he didn't answer. And I said, "Are you threatening me
12 with a bar complaint?" I remember -- specifically
13 remember that part. And he says, "I'm granting the
14 motion, but it sure sounds like you're forum shopping,"
15 and flipped the order over to his clerk and said, "It's
16 signed." And that was it.

17 Q. And then off you went to another division?

18 A. Yes.

19 Q. You're sure he threatened you with a bar
20 complaint or did he tell you that this could get reported
21 to the bar?

22 A. No, he never said this could be reported to the
23 bar. He said, "This sounds like a bar complaint to me."

24 Q. For what reason, though?

25 A. I don't know. I didn't know why he was angry at

1 me or anything.

2 Q. Would you agree with me that it would be
3 unprofessional and unethical behavior for a lawyer to seek
4 recusal only for purpose of forum shopping?

5 A. Correct.

6 Q. Would you agree also -- these are dumb
7 questions -- that it would be unethical and unprofessional
8 behavior for a lawyer to advise a client to seek recusal
9 when it's not justified?

10 A. Correct.

11 Q. Would you agree that it would be highly
12 inappropriate, unprofessional, unethical for a lawyer to
13 tell a client, "Look, if you hire me, I got a standing
14 recusal and you've got a chance of getting a more lenient
15 judge"?

16 A. Correct.

17 Q. Because that is what we call "improper forum
18 shopping"?

19 A. Yes.

20 Q. You know, there's actually legal forum shopping
21 and illegal?

22 A. Yes.

23 Q. But I'm talking about the improper, illegal.

24 And would you agree with me that if the justice
25 system is to work properly, lawyers should not be able

1 to -- or clients should not be able to get together with
2 lawyers and work the system by hiring particular lawyers
3 to get rid of particular judges?

4 A. That was done with Judge Barry Goldstein.

5 Q. You betcha. And with Judge Alemon, too.

6 A. And I wasn't ever a part of any of that. And I
7 never said anything with this to get out of it, because I
8 have so few cases in Dale Cohen's.

9 Q. Just to straighten this out, Judge Goldstein, is
10 he still a judge?

11 A. No, he's not. He's retired.

12 Q. Judge Goldstein never sunk his teeth in me, but
13 he was a real tough guy to do business with, wasn't he?

14 A. I don't think so. He was a harsh sentencer, but
15 he was a polite man. There was nobody more polite to the
16 lawyers or polite to the defendants. If they missed
17 court, he'd reinstate bond.

18 Q. If you went to trial --

19 A. If you went to trial, you would -- you could face
20 harsher sanctions, but that's in any judge's division you
21 could face that. It's not just one or the other. Judge
22 Imperato is the same way. Any of them. So there's no way
23 of saying that this judge is going to give you a better
24 shot than the others.

25 Q. Remember Malove ran against Alemon?

1 A. Yes, and I worked on Cheryl Alemon's campaign.

2 Q. Okay.

3 Do you remember there was talk and a buzz that
4 people were hiring Malove after the election that he lost
5 because he got an automatic recusal from Alemon?

6 A. No.

7 Q. Okay.

8 A. Mike Gottlieb had a recusal. He's the only one I
9 knew of with Cheryl.

10 Q. Take this as hypothetical, because I'm around,
11 too, here. Malove runs against Alemon. Alemon is a very
12 hard-nosed person and gives just -- really gives tough
13 sentences. And, as you remember, she also had some issues
14 where a lawyer called her a name and he ended up with a
15 bar complaint. You remember all that, right?

16 A. Yes.

17 Q. The heartless whatever. We're not going to
18 quote.

19 After the election, she wins, and Malove loses
20 and is still a practitioner doing defense work, right?

21 A. Yes.

22 Q. You can bet your biffy that Malove was not going
23 to practice in her courtroom; he'd get a recusal, right?

24 A. I don't know.

25 Q. You'd assume that, wouldn't you?

1 A. You would assume, but I don't think it's an
2 automatic refusal.

3 Q. What do you think about a client that would go
4 hire Malove only for the purpose of getting rid of Alemon
5 under those circumstances, and then after Alemon is gone
6 and it goes to Destry and all of a sudden again switch to
7 another lawyer, that's not right, is it?

8 A. No, I have no opinion. I'm not the defendant.

9 Q. No, but that would be unethical and improper
10 behavior, wouldn't it, to hire a lawyer only for purpose
11 of refusal?

12 A. I don't think criminals or defendants are bound
13 to the rules of ethics.

14 Q. But their lawyers are, right?

15 A. Yes.

16 Q. If the lawyer was in on it -- so let's say I came
17 along and went to Malove and said, Hey, I know if I hire
18 you as co-counsel just for a month and then you're off the
19 case, I hire you, and Malove agrees, I'm not saying he
20 would, but Malove agrees, and I agree, would you agree
21 that's unprofessional, unethical behavior by both of us?

22 A. Yes.

23 Q. Because the purpose of the appearance was not to
24 represent someone, it was to bounce the judge, right?

25 A. That's what was done with Alan Levine in Barry

1 Goldstein. I believe it was Alan Levine that had the
2 standard recusal with Barry Goldstein.

3 Q. Anything else you remember about that hearing
4 with Butler?

5 A. That's the gist of it that I remember. I just
6 remember that it was -- he was angry and it was
7 accusatory. I felt like he was trying to intimidate me
8 and embarrass me. That was not done --

9 Q. Did you ever after that hearing discuss this with
10 Dale Cohen?

11 A. Later.

12 Q. Where?

13 A. Over the telephone.

14 Q. You called him?

15 A. He called me. He had Greg Ross talk to me about
16 making peace and --

17 Q. Did he apologize?

18 A. -- then he had Ken Padowitz come to me. And I
19 told him I haven't filed any bar complaints. I don't have
20 a bone to pick with him. I don't -- after what I've been
21 through healthwise with my children and things in my life
22 that I'm going through and been through, I don't hold
23 grudges. I don't have a bone to pick with anybody. It
24 was over. It was over.

25 Q. Did you speak to Dale Cohen?

1 A. Yes.

2 Q. Did he apologize?

3 A. Yes, he did.

4 Q. He said, "I'm sorry if I put you in uncomfortable
5 position"?

6 A. I don't remember word for word what he said.

7 Q. What was the essence of it?

8 A. The essence was that he agreed to a permanent
9 recusal. It wasn't done to embarrass or intimidate me; it
10 was done to work things out. That we were good friends
11 and it was just to work things out to get us together.

12 Q. Did you thank him for the call?

13 A. Yes. I said thank you for the call and we agreed
14 there would be a permanent recusal from that point on.

15 Q. Did you think he was genuine? Was he kind on the
16 phone?

17 A. He was kind on the phone.

18 Q. Okay.

19 Do you feel like that was a good thing, now you
20 can both see each other, smile, and say hello without an
21 issue?

22 A. I didn't have an issue before, and I still don't
23 now, but I'm not happy with what happened because I felt
24 it was very unprofessional to have the hearing where you
25 call your wife and you question my credibility with --

1 versus your own wife's in a full courtroom.

2 Q. When he was quote/unquote questioning your
3 ability, was anybody investigating you for this that you
4 know of?

5 A. No.

6 Q. And there's no bar complaints from anybody?

7 A. No.

8 Q. As a result of all of this, you have not received
9 any bar complaints, right?

10 A. No.

11 Q. You have not been sued by anybody, right?

12 A. No.

13 Q. Okay.

14 Let's talk about the picture. Picture time.

15 A. Okay.

16 Q. Are you aware apparently that Mardi took your
17 picture?

18 A. I am now.

19 Q. Did you see these two pictures?

20 A. I have now.

21 Q. Okay.

22 And who's that, the women with no head?

23 A. I have no idea.

24 Q. And who is that prosecutor talking on the right
25 podium? This is on --

1 A. That's Jared Brown.

2 Q. -- JQC No. 1, page 2.

3 A. That's Jared Brown.

4 Q. Who's a prosecutor, right?

5 A. Yes.

6 Q. This is Judge Levenson's court?

7 A. Yes.

8 Q. Are you aware cameras are allowed in the
9 courtrooms?

10 A. Yes.

11 Q. And you're aware that in Florida, without a
12 specific order, that anyone can go shoot pictures in a
13 courtroom?

14 A. Yes.

15 Q. And unlike California -- unlike the federal
16 courts. If you're in federal court, you can't get a
17 camera in the courtroom. Are you aware of that?

18 A. Yes.

19 Q. You ever see on TV they have the artist
20 rendering?

21 A. Yes.

22 Q. Do you know what the reason for that is?

23 A. No.

24 Q. No camera.

25 A. Oh, okay.

1 Q. You're aware that Florida has an actual law or an
2 actual rule from the supreme court that says, unless
3 there's a specific reason, cameras are automatically
4 allowed in the courtroom?

5 A. I'll take your word for it. I don't know.

6 Q. Are you aware of it?

7 A. No.

8 Q. Well, you've seen cameras --

9 A. All the time.

10 Q. -- and nobody stops them, right?

11 A. No.

12 Q. Have you ever had a rape case or a child case
13 where the judge orders, hey, no cameras because this is
14 going to be --

15 A. I don't take sex offender cases.

16 Q. Neither do I anymore. But have you ever had a
17 case where that happened?

18 A. No.

19 Q. Have you ever had a case where you had enough
20 publicity where the TV cameras were in there shooting?

21 A. Yes.

22 Q. Okay.

23 They don't ask permission; they just do it,
24 right?

25 A. Yes.

1 Q. This particular picture, the picture of you at
2 the podium, that's you in cargo pants, sneakers and a
3 jacket, right?

4 A. Yes, it is.

5 Q. You weren't wearing a tie that day, were you?

6 A. No, I was not.

7 Q. Did Mardi hurt you, bother you, insult you, or
8 intimidate you, anything by taking this picture?

9 A. I didn't notice it when it was being done because
10 I was taking a change of plea.

11 Q. You didn't even know it was happening, did you?

12 A. No, I didn't.

13 Q. Did you see the bailiff over there taking
14 pictures of Mardi?

15 A. No, I found out about it afterwards.

16 Q. Okay.

17 This other picture of you sitting, blurry, who's
18 the young man closest to you?

19 A. I think the public defender.

20 Q. I think so, too.

21 This is a busy courtroom, right?

22 A. Yes.

23 Q. Did you even know that somehow Mardi took this
24 picture?

25 A. No.

1 Q. Did she bother you at all by taking it?

2 A. I didn't see.

3 Q. Do you really care less that Mardi took two
4 pictures of you in this courtroom?

5 A. It's bothersome that you would do something in an
6 effort to embarrass somebody or just bring it up to bring
7 attention to them.

8 Q. Are you aware why she took the picture?

9 A. No.

10 Q. Okay.

11 And did you ever find out?

12 A. No.

13 Q. Did the JQC ever tell you why?

14 A. Yes. They --

15 Q. What did they tell you?

16 A. That it was to show my disrespect for the Court
17 and how I where my clothes. I'm disrespectful to the
18 Court.

19 Q. Who told you that?

20 A. I believe that's what the response was that was
21 sent to the JQC.

22 Q. You read that?

23 A. Yes.

24 Q. How did you get that?

25 A. It was shown to me.

1 Q. Before the charges were made public or after?

2 A. After.

3 Q. And did you read that whole multi-page thing that
4 Dale had written?

5 A. No.

6 Q. Clearly, that is the way you dressed that day,
7 right?

8 A. Yes.

9 Q. Okay.

10 Let's talk about the lawsuit. Now, there came a
11 time a couple of years ago during that election where your
12 friend Pedro was running as a sitting judge, actually, and
13 he had two opponents unfortunately; he didn't make the
14 cut, did he?

15 A. No.

16 Q. Strange but true.

17 Now, this -- I have here JQC No. 2. This is a
18 complaint that even I would have trouble trying to figure
19 out.

20 Have you ever read this?

21 A. Yes, I did.

22 Q. Okay.

23 Now, this complaint -- and I know there's some
24 amended complaints and stuff like that -- of all the
25 complaints and amended complaints, they're all filed by a

1 Conrad and Scherer, right?

2 A. Yes.

3 Q. Out of any of this stuff, can you show me
4 anything where you wrote any of this?

5 A. No.

6 Q. You did not write any of it, did you?

7 A. No, I did not.

8 Q. And Let's talk about research. You said you did
9 some help with this?

10 A. I did research to see whether she had violated
11 bar rules by running as a judge when you're not -- there
12 is no sworn attorney "Mardi Levey". And to run as a
13 judge, you had to be sworn in and be a member, I believe,
14 of the bar for, what, five years? And there was no
15 attorney "Mardi Anne Levey".

16 Q. Kind of like Jordan Jordan, right?

17 A. Yeah.

18 Q. I just told Mr. Pope about the case last week.

19 Now, here's what I want to know. How do you do
20 your research? Do you Westlaw, LexisNexis, Fastcase?
21 What do you use? Books?

22 A. WestLaw dot solo.

23 Q. Do you pay a flat fee?

24 A. I share the service with Russell Williams.

25 Q. Two lawyers using it?

1 A. At least.

2 Q. I'm on the pro plan. I get all of Florida,
3 unlimited. And you know on Westlaw, if you go one second
4 outside the plan, you get a monster of a bill, right?

5 A. I don't know. Russell sends me a bill each month
6 and I send him a check.

7 Q. Is it always the same, 50 or 100 bucks?

8 A. Something like that.

9 Q. Are you guys basically splitting an account?

10 A. Yes, we do.

11 Q. Is Westlaw aware there are two people on that
12 account?

13 A. I don't know.

14 Q. Are you aware that they don't do that and that
15 you have to actually have your own account and you're
16 actually stealing from them?

17 A. I didn't know that.

18 Q. Well, I won't tell the Westlaw guy that.

19 A. Thank you.

20 Q. But -- so you would split a Westlaw account with
21 Russell Williams?

22 A. Yes.

23 Q. And you have a password that's -- are you a
24 Westlaw guy?

25 MR. POPE: I think so.

1 THE WITNESS: Four letters and like five
2 numbers.

3 BY MR. CATALANO:

4 Q. And if you don't put that in, you can't get in?

5 A. Correct.

6 Q. Have you ever called their 800 number and those
7 wonderful people in Minnesota who help you with the
8 research?

9 A. I don't think so.

10 Q. Okay.

11 You've never called the 800 help line?

12 A. Not to the best of my knowledge.

13 Q. So when you go on, you do regular Westlaw
14 research by going into the site and doing your research by
15 running queries, right?

16 A. Yes.

17 Q. How many times did you go on the Westlaw and
18 research to help with this lawsuit, which is Exhibit JQC
19 No. 2?

20 A. I don't remember.

21 Q. Did you even go in once?

22 A. I went in, as I explained, to look up the bar
23 rules to see if there could be a bar complaint filed by
24 Mardi Anne Levey, yes.

25 Q. Because she ran as "Mardi Anne Levey" and not

1 "Mardi Cohen"?

2 A. Correct. There was no attorney in the State of
3 Florida "Mardi Levey".

4 Q. Now, the bar rules, where are they in Westlaw?
5 How do you find them?

6 A. You didn't go into Westlaw. You to the bar
7 attorney -- excuse me, the bar handbook and you look at
8 the rules and look at the notes afterwards. And then I
9 ran to see if there were any cases on that.

10 Q. So you actually found the rule in Westlaw?

11 A. What it says is you had to be a practicing lawyer
12 for five years.

13 Q. That's it, right?

14 A. Correct.

15 Q. So there is no bar rule at all that affects this
16 situation, right?

17 A. No.

18 Q. I know that because I've done these lawsuits,
19 too. That's the only research you did, right?

20 A. Correct.

21 Q. Now, I like Mary Robinson. And I bet you like
22 her, too.

23 A. Yes.

24 Q. That's a nice lady, would you agree?

25 A. Yes.

1 Q. Mary Robinson is a judge?

2 A. Yes.

3 Q. She's a sitting judge for many years, right?

4 A. Yes.

5 Q. And about a couple months ago, this guy who's a
6 chiropractor named Jordan Jordan runs for judge against
7 her, right?

8 A. Yes.

9 Q. Kind of ring a bell?

10 A. Yes.

11 Q. Now, I did the same thing you did; I asked myself
12 a question, who is that? Because I saw "Butch Cassidy and
13 the Sundance Kid." Remember when they got shot? Who are
14 those guys, right?

15 A. Right.

16 Q. And I couldn't find Jordan Breslaw. You know
17 why, right?

18 A. Yes.

19 Q. He doesn't exist?

20 A. That's what I did with Mardi.

21 Q. Same thing?

22 A. Yes.

23 Q. Unless you knew his name was Jordan Jordan, you
24 would not know where to look him up?

25 A. Correct.

1 Q. So the question is is that against the bar rules
2 to run for judge. Very quickly, you found there is no bar
3 rule for the ominous, it just says that you have to be a
4 lawyer for five years, right?

5 A. But, see, what's interesting is when we -- this
6 is -- we'll get back to -- and I can make it easier so you
7 don't have to ask questions all around it.

8 While this was going on, I had talked to Bill
9 Sherer to see about possibly being the named plaintiff
10 because you needed a named voter.

11 Q. Any voter in Broward County?

12 A. Correct.

13 And they said, "No, we don't need you to."

14 And I said, "Well, I'm possibly going to file a
15 bar complaint against Mardi because I don't feel that
16 Mardi Cohen can legally run for judge, and I want to file
17 a bar complaint against her saying that Mardi Levey is not
18 eligible to run for judge because it's fraud on the
19 voters."

20 I explained the reason is if somebody wants to
21 investigate and look up, like you were saying Jordan
22 Jordan, to see, okay, what's the discipline that Mardi
23 Levey has had, they will find nothing there and that there
24 is no lawyer, and that's -- that could be considered
25 fraud, and the public has a right to know. And as such,

1 it's a bar complaint. You should be Mardi Cohen -- that's
2 the name you're sworn in on the bar -- so if somebody
3 wants to look you up, investigate and see before they
4 voted what's your disciplinary record, they can do that.
5 And by changing her name, there's no way that could be
6 done.

7 Q. Unless you find the right person?

8 A. Yeah, to find.

9 Q. Once you find Cohen, you found the right person,
10 you found Mardi Levey Cohen?

11 A. Right, but she wasn't running as Levey-Cohen, she
12 was running as Mardi Anne Levey. And the public, based on
13 the name that was on the ballot, wouldn't know if Mardi
14 Anne Levey had any discipline.

15 Q. And, boy, the Fourth DCA did not agree with that
16 argument at all twice now, right?

17 A. It's --

18 Q. I know -- this is recent. This just came out.
19 It's even worse with Breslaw.

20 A. Yeah, but they -- it's not that they didn't
21 agree. I don't think that -- and this is what I talked
22 with Bill about, and I talked with Pedro a lot about this,
23 is that they didn't go through the bar, they went through
24 the courts. I think if you went through the bar, that's a
25 different -- it may be something different there because

1 they may not be eligible.

2 Q. What other research did you do other than that?

3 A. That's what I did.

4 Q. That took five minutes, didn't it?

5 A. No. I don't know the time. This was two years
6 ago.

7 Q. Didn't take long, did it?

8 A. I don't know how much time it took. I spent a
9 lot of time with Pedro discussing the suit. He was in my
10 office almost daily.

11 Q. If this lawsuit was filed on September 5th, 2008,
12 and I know these things happen fast. I just saw it, like
13 I explained to Mr. Pope, when these suits get filed, they
14 get expedited super fast?

15 A. Yes.

16 Q. When this suit got filed, was the research you
17 had done about a couple days before?

18 A. No, it was before that.

19 Q. Month before? Week before?

20 A. I don't remember exactly.

21 Q. And when you log onto Westlaw, do you log on as
22 yourself, or do you how long on as Russell Williams?

23 A. Just our password that we share.

24 Q. Do you put a client code in every time?

25 A. No.

1 Q. Doesn't Westlaw force a client, something, even
2 the letter A?

3 A. Yeah. And I would just -- whenever -- I never
4 kept the client code. I've never done that.

5 Q. You just peck something to fill it?

6 A. Yes.

7 Q. If you don't fill that box with something, you
8 can't get in, right?

9 A. I never -- I don't put a client name. I just put
10 a one or two, just a number or something.

11 Q. How long do you think you were logged onto
12 Westlaw?

13 A. I don't know. It was two years ago.

14 Q. You used no other research for this, right?

15 A. Correct.

16 Q. That's the extent of the legal work you did on
17 this case?

18 A. Correct.

19 Q. And now, this case, Pedro Dijols and Mardi Levey
20 and all that, went to court in front a judge here and then
21 shifted to someone in another county, I think a Dade
22 judge, right?

23 A. Yes.

24 Q. Retired Judge Feder, I think?

25 A. Yes.

1 Q. Then went to the Fourth DCA?

2 A. Correct.

3 Q. You never appeared in front of Judge Feder, did
4 you?

5 A. Not sitting at the table with Pedro Dijols, no, I
6 didn't.

7 Q. You never appeared at the Fourth DCA, did you?

8 A. No.

9 Q. A brief was written at the Fourth DCA, right?

10 A. Correct.

11 Q. You didn't prepare the brief?

12 A. No, I did not.

13 Q. You did no research?

14 A. No, I did not.

15 Q. The only thing you did was check the bar rule and
16 the interpretation, right?

17 A. And that -- yes.

18 Q. You never filed a bar compliant?

19 A. No, I did not. I was told not to.

20 Q. By?

21 A. When I talked with Bill Sherer and I had talked
22 with Pedro, they said let's wait to see what goes on with
23 the lawsuit. And then after Pedro lost the lawsuit, he
24 said forget about it, let just move on. I said okay. And
25 moved on.

1 Q. Okay.

2 There was something about a recount.

3 Did you go down to the meeting when they did a
4 recount?

5 A. No, I did not.

6 Q. But you found out Dale was there?

7 A. Yes, I did.

8 Q. Now, is there any law or rule that prohibits
9 anyone from sitting and watching?

10 A. I don't know.

11 Q. Kind of like this depo. You know, this is --
12 somebody could sit here and watch. Are you aware of that?

13 A. Correct, unless they're a witness, right?

14 Q. Yes, but then I'd invoke the rule.

15 A. Okay.

16 Q. So you never went to the supervisor of election,
17 had anything to do with the recount thing?

18 A. No, I did not.

19 Q. Okay.

20 But the lawsuit said something about him being at
21 the recount, right?

22 A. Yes, he was.

23 Q. Did you ever allege that Dale broke any law or
24 rule by being at the recount?

25 A. I never alleged he violated anything.

1 Q. Okay.

2 I'm going through the complaint here. In
3 paragraph 2, it discusses the hearing on the Gibbs matter.

4 A. Okay.

5 Q. Did you have more questions you wanted to ask
6 that day, or -- I read the transcript. Sounded like you
7 were done. You said "nothing more."

8 A. I just felt uncomfortable there. If I had the
9 time to prepare, there was a lot I would have liked to
10 have done and said. But I felt very uncomfortable because
11 you have got a judge you're practicing in front of and
12 you're there, his wife is there, and it's a very
13 uncomfortable feeling if you're attempting to discredit
14 somebody's wife in front of them. It's not a comfortable
15 feeling to be in.

16 Q. You didn't testify, did you?

17 A. Yes -- I believe -- I believe I did. I don't
18 remember.

19 MR. POPE: You weren't sworn. You were
20 asked questions, but you weren't sworn.

21 BY MR. CATALANO:

22 Q. Yeah, I don't think you were sworn.

23 A. The transcript is whatever it is. I don't
24 remember word for word.

25 Q. Okay.

1 But you did get to put your two cents in, didn't
2 you?

3 A. I did get to make arguments, yes, I did.

4 Q. Did you get cut off?

5 A. Not that I remember. Whatever the transcript is
6 is what it is.

7 Q. He granted the motion, right?

8 A. Correct.

9 Q. In the part of we don't have transcribed before
10 lunch where he says come back for a hearing, did he ever
11 say or do anything to make you feel he was bringing you
12 back to get even with you, or intimidate you, or harass
13 you, or just to have a hearing?

14 A. I don't know. It felt uncomfortable. It just
15 wasn't a comfortable feeling when you're being told to
16 come right now and then come back and then to hear that
17 his wife is going to be testifying or involved.

18 Q. Okay.

19 Now, in this paragraph 6 of the complaint, this
20 is how I get here today, there's discussion about the
21 attorney-client privilege.

22 What actual privileged information did Mr. Butler
23 actually give over? Nothing, right?

24 A. I don't remember word for word what happened in
25 the hearing because we don't have a transcript.

1 Q. Okay.

2 But what do you remember? You were there.

3 Because I've talked to other people there, and they don't
4 remember anything privileged getting out.

5 What was privileged, if you know?

6 A. I don't remember because we don't have the
7 transcript, and it's been maybe a year ago or more.
8 That's -- I really don't remember.

9 Q. How old are you?

10 A. Fifty-five.

11 Q. Me, too. So you have an excuse.

12 And what personal interest did Judge Cohen
13 advance that day by having the Butler hearing? I know
14 these are dumb questions, but tell me what personal
15 interest, personal interest he advanced that day?

16 A. I don't know, but it felt like I was being
17 intimidated or embarrassed by him in the courtroom.

18 Q. And what personal interest did he advance of his
19 wife that day by having that hearing?

20 A. I don't know. I don't know what thought was
21 going through his mind. I was working on Geoffrey
22 Backman's campaign, who at that time was opposed to Mardi
23 in the same group.

24 Q. What organizations did Paul Backman, the circuit
25 judge, belong to at the time and still does? The JQC?

1 Were you aware of that?

2 A. I found out afterwards. Because I've never been
3 involved in a JQC complaint, so I don't know whose --

4 Q. Did you read the blog, all the accusations that
5 this was all to get even -- I'm not saying this is true --
6 to get even with my client because Geoffrey Backman's dad
7 was on the JQC?

8 A. I don't know. I don't always read the blog. I'm
9 sorry.

10 Q. Did you ever read any of that?

11 A. I read some. I don't read it very often since
12 I'm a target of it, too, so...

13 Q. I am, too, sometimes.

14 What personal gain did Judge Cohen get for
15 himself or his office by having that hearing on the Butler
16 case?

17 A. As I explained, I don't know. It just felt like
18 I was being intimidated or embarrassed in a full court, in
19 a courtroom.

20 Q. Okay.

21 How were you embarrassed and intimidated by the
22 fact that Judge Cohen had a hearing much later on the
23 Gibbs matter after it was sent back by Judge Gillespie?
24 In other words -- let me back up.

25 For this question, Gibbs is now sent back to

1 Judge Cohen because there's no longer a recusal, and Judge
2 Cohen now has this person, this file, prosecutor, and not
3 you, another defense lawyer. Okay. We're back, right?
4 Right? You weren't even there that day, right?

5 A. Correct.

6 Q. How were you embarrassed or intimidated that day
7 by Mr. Gibbs being asked questions by Judge Cohen?

8 A. I believe his -- I don't know what was said word
9 for word because I wasn't there, but it would just seem to
10 me a little awkward or embarrassing that a judge is
11 questioning about you as a lawyer and you're not even
12 there to a former client.

13 Q. Okay.

14 Before all of this unpleasantness started with --
15 it started with Gibbs for the hearing, when that
16 unpleasantness started with Judge Cohen, as you describe
17 it, before that, wouldn't you say that you had no
18 animosity at all with -- toward Judge Cohen?

19 A. I had no problems with him.

20 Q. Are you aware what Judge Cohen said at the JQC,
21 because it's in the complaint, about you, that you had a
22 reputation for being less than ethical?

23 A. I found that out afterwards when I read it.

24 Q. How do you feel about that?

25 A. It bothers me.

1 Q. Now, here's my favorite question. Do you send
2 clients to court without you just to say, hey, ask for a
3 continuance?

4 A. Never.

5 Q. Never?

6 A. Never.

7 Q. Never?

8 A. Never.

9 Q. Now, I understand, we talked about this in cases.

10 A. Yeah.

11 Q. Let's say I have a case tomorrow in front of
12 Judge Destry and I'm sick and the client's there and I
13 send a message, I'm sick, I can't get coverage --

14 A. Never done that.

15 Q. -- that's one thing, but have you ever sent a
16 client a day or two before just to ask for a continuance?

17 A. To the best of my knowledge in all my years I
18 never have. I don't get sick. I come to court sick
19 because I'm a sole practitioner, so I'm there for me. And
20 in emergencies, when my son was hospitalized, and we
21 were --

22 Q. That's different.

23 A. No, but those would be the only situations. And
24 I have other attorneys who I have working relationships
25 with who have always covered for me. So I have never,

1 ever, ever, to the best of my memory, ever sent a client
2 by himself.

3 Q. Have you ever had a client ask for a continuance
4 because you couldn't get coverage?

5 A. Never.

6 Q. So you've never had a client walk up in front of
7 a judge and say, "I'm here, my lawyer is Melnick, he's not
8 here, he asked me just to ask for a continuance"?

9 A. To the best of my memory, never.

10 Q. Who is Rocendo Louis? Who is that?

11 A. He's a client -- was a client.

12 Q. Was there a motion to recuse on him?

13 A. Yes, there was.

14 Q. And did you -- on all these, you filed it with
15 the State and with the clerk?

16 A. Yes.

17 Rocendo had a VOP, and we actually worked it out
18 in Judge Carlos Rodriguez.

19 Q. If -- if after this deposition we were to
20 subpoena certain records from your office, how would you
21 like that delivered to you? Would you accept it by me
22 sending it to you electronically?

23 A. Yeah. You can just -- you could call the office.
24 What we've done --

25 Q. I wouldn't call. I'll talk to you.

1 A. What we've done with all our records, we don't --
2 we've gone paperless. All my old files have been
3 transferred into a -- my daughter did this for me since
4 she's up on data modern stuff -- onto a hard drive thing,
5 and you have to give me the name and the year and the case
6 number, and she has the ability to pull them off of the
7 hard drive and print what you want.

8 Q. Okay.

9 I'll be in touch.

10 A. Okay.

11 Q. If they can be electronically sent to both me and
12 Mr. Pope, if you do it, you'd be doing me a favor.

13 A. She knows how to do that, I don't. That's why I
14 have her.

15 Q. I will ask you to ask the expert to get involved.

16 A. Okay.

17 Q. Have you ever read the transcript of what was
18 said when Mr. Coffey was in court with Mr. Gibbs talking
19 about you?

20 A. No. Could I?

21 Q. Not right now.

22 MR. POPE: That would slow us down.

23 THE WITNESS: I'm sorry. Okay.

24 BY MR. CATALANO:

25 Q. Now, there was a little boo-boo by Mr. Pope.

1 About a week or two ago, we were setting -- talking about
2 setting depos, and we were all using e-mails.

3 A. Yes.

4 Q. And somehow he bumped into that "reply all"
5 button, which we're all guilty of, and said, "Hey,
6 Steve" --

7 MR. POPE: I sent it to Michael Catalano
8 instead of Michael Snyder.

9 BY MR. CATALANO:

10 Q. "Hey Steve, got the intel on these people. All I
11 know is Sherer."

12 Did you respond to him on that?

13 A. Yeah.

14 Q. What did you tell him?

15 A. From what --

16 MR. POPE: Not much.

17 THE WITNESS: I don't know who most of
18 them are.

19 BY MR. CATALANO:

20 Q. What did you tell him?

21 A. I just said this person is this, this person is
22 that.

23 Q. Well, tell me who this person is this and --

24 A. Which one? Tell me which person. Give me the
25 names.

1 Q. Here's the notice of the depo.

2 A. Okay.

3 Justin Griffis I said is the state attorney.

4 Marcus Griggs works, as far as I know, for Regional
5 Conflict Office. I think Bernard Hardge, is he the court
6 deputy in there?

7 Q. Correct.

8 A. I don't think I saw Yolanda Lesane. I don't know
9 who she is.

10 Q. Aside from telling what people did for a living,
11 did you tell them any intel? Because that's not very
12 useful intel.

13 A. No, that' all I knew.

14 Q. That's all you knew?

15 MR. POPE: It was a dry hole. Here's
16 where I wrote it down. It was --

17 MR. CATALANO: Not much intel from
18 Steve, right?

19 THE WITNESS: No. Ask my wife about
20 Steve's intel.

21 MR. CATALANO: Shame on me for not
22 asking.

23 MR. POPE: You've got to ask.

24 BY MR. CATALANO:

25 Q. Okay.

1 Do you agree that Judge Cohen granted about eight
2 or nine or so recusals without hearings?

3 A. Whatever -- yeah, whatever the record, I don't
4 know.

5 Q. These are my notes.

6 A. I don't know exact number. Not a lot.

7 Q. And except for the one hearing on August 6th,
8 Judge Cohen never discussed the merits of the case on
9 recusals, right?

10 A. Which is August 6th?

11 MR. POPE: Gibbs.

12 BY MR. CATALANO:

13 Q. Gibbs.

14 A. No, I think Butler.

15 Q. And Butler, okay.

16 So you're saying on August 6th, when this big
17 Gibbs hearing happened, we have the transcript, it was not
18 calendar call, you were just summoned there, right?

19 A. To the best of my memory.

20 Q. Now, the calendar calls are usually 9 or 9:30, I
21 know I'm seeing a lot in the afternoon now, but 9 or 9:30.
22 What time did you show up that day?

23 A. They asked me to come -- it was before lunch. It
24 was maybe 11ish, somewhere around there is when I got the
25 message from Mrs. Taylor -- Ms. Barner.

1 Q. And you remember him saying, Dale Cohen, at the
2 end of the hearing on August 6th, this is the Gibbs
3 hearing, something about that you've been friends for
4 20 years and just trying to clear up some issues?

5 A. I don't remember that. Whatever is on the record
6 is, because I don't remember word for word.

7 Q. And do you remember seeing something that day
8 that you still keep some cases in that division even
9 though others you move for recusal?

10 A. Whatever is on the record is on there. I don't
11 remember what I said. I know I had cases in there where
12 the clients didn't want the recusal and we stayed in
13 there. I don't remember that client's name either.

14 Q. And the conversation where Dale Cohen called you
15 to clear this up, do you remember him saying he wanted to
16 clear up a misunderstanding and apologize?

17 A. I don't remember word for word what --

18 Q. Do you remember he invited you to lunch?

19 A. Yes, they invited me to go to lunch.

20 Q. You remember telling him you only each lunch in
21 your office?

22 A. That's correct.

23 Q. You and Chris Roberts, right?

24 A. No, I don't go out to lunch. I enjoy being in
25 the office by myself. It's very relaxing. And my dog.

1 Q. Did you ever file a motion to recuse on a case
2 where you weren't the lawyer of record?

3 A. No.

4 Q. Okay.

5 Did you ever file a motion to recuse on a case
6 where you never filed a notice of appearance?

7 A. No.

8 Q. Would you agree --

9 A. To the best of my knowledge, no. I'm not exactly
10 sure.

11 Q. So on all of these cases we're discussing, if you
12 were filing motions, you represent the people, and you
13 file a notice of appearance?

14 A. To the best of my knowledge, I may have; I may
15 not have; I don't remember.

16 Q. But you understand, though, the way the clerks
17 work, if you don't file a notice of appearance, if you
18 file a motion, it can be confusing to them; can't it?

19 A. Yes.

20 Q. And, in court, if you don't file a notice of
21 appearance, theoretically, you're not the lawyer of
22 record, are you?

23 A. Yes.

24 Q. And this clerk's office loves to practice law
25 without a license and tell you what you can and cannot do,

1 right?

2 A. I don't know.

3 Q. Trust me, they do.

4 Okay. So you're telling me you -- all these
5 cases you filed these motions recusing, you were clearly
6 the attorney of record and were retained formally by the
7 client?

8 A. Yes.

9 Q. Would you agree with me -- I do this like you
10 do -- that if somebody's in jail and they want you to
11 represent them, just because an aunt, or sister, or
12 brother comes up with money doesn't mean you're their
13 lawyer, that just means you're going to meet with them and
14 if they retain you, then you become their lawyer?

15 A. Yes.

16 Q. Because the client personally hires the lawyer,
17 not the family, right?

18 A. Correct.

19 Q. Even if the family gives you one million bucks,
20 your allegiance is to the client, right?

21 A. Correct.

22 Q. We have to explain this to people, don't we?

23 A. Yes.

24 Q. So that when the co-defendant's cousin, Mr. Big,
25 gives you money and tells you, make sure the client shuts

1 up, you can't take the money, right?

2 A. Correct.

3 Q. You are a survivor.

4 Did you ever file a notice of appearance in any
5 case more than three or four weeks later and backdate it?

6 A. No.

7 Q. Would you ever do that?

8 A. No.

9 Q. You're 100 percent sure you've never filed
10 pleadings and backdated?

11 A. To the best of my memory, I have never, ever
12 backdated anything.

13 Q. In all your years of being a lawyer, have you
14 filed a pleading, any pleading, with the clerk of the
15 court and had them file-stamp it weeks and weeks later?

16 A. I don't know when they file-stamp it.

17 Q. But have you come across that --

18 A. Yes.

19 Q. -- where you filed something?

20 A. Yes, yes. There are things, especially, and also
21 with the State, because they get handed to the girl at the
22 window when you file them, and there are sometimes
23 pleadings, as you're well aware, that never make the file.
24 They get lost. There are files that are lost. I have
25 somebody I filed pleadings on a case and we have got

1 another two weeks and the case is going to get dismissed
2 because the State's pleadings -- State's information never
3 made the file. So that happens and can happen.

4 Q. But have you ever seen that?

5 A. I don't ever look at the dates.

6 Q. No, but have you ever been involved in something
7 where you start messing with the file in Court or
8 otherwise and go, wow, I filed this pleading on day X and
9 the clerk has it stamped in weeks later?

10 A. No. I never looked at the date.

11 Q. Did you ever have an Arthur hearing in front
12 Judge Cohen pursuant to State versus Arthur, presumption
13 great, proof evident?

14 A. Possibly. I don't know.

15 Q. Did you ever lose one where he denied the bond
16 and kept the person no bond?

17 A. Most likely. If it shows it, yes. I really
18 don't remember. If you can tell me a client's name --

19 Q. When all this was happening months ago, do you
20 remember the blog saying Dale Cohen was a real tough
21 sentencer?

22 A. No.

23 Q. Would you agree having a client signing an
24 affidavit swearing to fact that he has absolutely no
25 knowledge of, neither personal knowledge nor even hearsay

1 knowledge, would justifiably cause concern for a judge to
2 get upset?

3 A. No, I don't know. That's up to a judge.

4 Q. Did you ever tell any client that Judge Cohen was
5 a tough sentencer?

6 A. No.

7 Q. Did you ever tell them that because he was a
8 tough sentencer -- any client -- that you would get a case
9 transferred to a judge who you were friends with?

10 A. No.

11 Q. I want to talk about Gibbs. You said who is the
12 person that came in and paid you? The sister?

13 A. The girlfriend.

14 Q. Not the mother?

15 A. You're talking almost two years ago. I really
16 don't remember who came in and pays. Somebody came in and
17 paid, and I don't remember.

18 Q. Did you ever tell the woman -- it's just a women,
19 right?

20 A. To the best of my knowledge, yes.

21 Q. She came in with the money. Did you ever tell
22 her you would get the case transferred to someone who
23 would be less tough?

24 A. No.

25 Q. Did you ever tell her that someone -- it would be

1 sent to someone who would likely set a bond so he can get
2 out pending --

3 A. No.

4 Q. Where would they get that idea if they were
5 saying that?

6 A. I have no idea.

7 Q. I'm not saying they are, but where would they get
8 it?

9 A. They can say whatever they want or think whatever
10 they want to try to benefit themselves afterwards thinking
11 it may help them.

12 Q. Okay.

13 Are you aware when you talk to people in the jail
14 that they listen sometimes if they call you?

15 A. The jail listens, yeah, all the time.

16 Q. Got to be real careful, don't we?

17 A. Yes.

18 Q. Do you announce when we you talk to people on the
19 jail lines that, "I'm a lawyer, don't record this"?

20 A. No. I tell the client don't discuss the facts of
21 the case ever over the phone with me.

22 Q. Usually, it's discussing retainers, getting paid,
23 showing up for bond hearings, that kind of stuff, right?

24 A. It varies. It could be anything.

25 Q. Okay.

1 Anything else you know about Judge Cohen that
2 affects this complaint?

3 A. No.

4 Q. Okay.

5 We're going to have a trial apparently where
6 we're going to be here for two days in September.

7 Are you available September 13th and 14th?

8 A. Yes.

9 Q. Okay.

10 Have you ever met with anybody from the JQC to
11 discuss this face to face?

12 MR. POPE: A member or with me?

13 BY MR. CATALANO:

14 Q. The lawyer for the JQC or Mike Schneider?

15 A. Mike Schneider, I believe, and Mr. Pope.

16 Q. Mike Schneider came down here to visit you?

17 A. I believe he did.

18 Q. Did he take a sworn statement from you?

19 A. I don't think so.

20 Q. Just informal conversation?

21 A. To the best of my memory, yes.

22 Q. Did you tell him you wanted charges filed against
23 Dale Cohen or not?

24 A. Not up to me.

25 Q. What did you say?

1 A. I don't remember my conversation with him. It
2 was probably a while ago, and I don't remember what we,
3 you know, what it was about, you know, in detail.

4 Q. And did he tell you he was going to ask the panel
5 to file charges?

6 A. I don't remember what he said.

7 Q. Were you subpoenaed to talk to him?

8 A. No, I wasn't.

9 Q. You never went to Tampa or anywhere for a
10 meeting, right?

11 A. No.

12 Q. You never gave sworn testimony in front of the
13 ultimate inquisition panel?

14 A. No.

15 Q. This is Mr. Pope. Have you ever met him before?

16 A. Just on this case.

17 Q. Okay.

18 But you talked to him on the phone ever?

19 A. Yes, on this case.

20 Q. Is that after the intel memo or before?

21 MR. POPE: Before.

22 THE WITNESS: Before.

23 BY MR. CATALANO:

24 Q. What did you tell him?

25 A. I told him what happened. He asked me what

1 happened and I told him.

2 Q. Anything different than anything you told me
3 today?

4 A. No.

5 Q. Okay.

6 What did he ask you? What specifically? I mean
7 "what happened" is pretty vague question. What did he
8 specifically say? Do you remember?

9 A. He asked me what happened, and I told him what
10 happened with the hearsay. And that was it.

11 Q. Was he going into great detail on that hearing
12 without the transcript?

13 A. He wanted to know about the hearing. I told him
14 what I remembered that happened during the hearing, and
15 who else was there, and I told him, and that was it.

16 Q. Would agree with me you don't have a perfect
17 memory as to what happened during the hearing on the
18 Butler matter, for which there is no transcript?

19 A. I don't have a perfect 100 percent recollection,
20 correct.

21 Q. And you did try to order a transcript, right?

22 A. Yes, I did.

23 Q. And much to everyone's chagrin, no transcript,
24 right?

25 A. Correct.

1 Q. Okay.

2 Now, I've asked you a lot of questions today?

3 A. Yes.

4 Q. Have you had adequate time to answer all of them?

5 A. Yes.

6 Q. If I called you to a trial or a hearing in this
7 matter, would your testimony be consistent with what you
8 told me under oath?

9 A. Yes, it would be.

10 Q. Anything you'd like to add, change, or delete to
11 these answers so they are true, complete, correct, and
12 honest?

13 A. No.

14 Q. And everything you told me today is the
15 100 percent truth?

16 A. To the best of my knowledge, yes.

17 Q. Anything you want to change? This is your last
18 chance.

19 MR. POPE: Actually, his last chance is
20 on the errata sheet.

21 BY MR. CATALANO:

22 Q. I mean today, though, last chance today.

23 Assume ma'am court reportress types this
24 correctly --

25 A. I'll waive.

1 Q. You'll waive?

2 Okay. You understand that I have nothing against
3 you, right?

4 A. Correct.

5 Q. You realize I'm doing a job you frequently do,
6 right?

7 A. Right.

8 Q. Defending?

9 A. Correct.

10 Q. Have I been polite to you today?

11 A. No -- yes.

12 Q. And you have been extremely cooperative in
13 setting this deposition; and for that, I thank you.

14 A. Okay.

15 MR. CATALANO: Unless you have any
16 questions?

17 MR. POPE: I have nothing.

18 MR. CATALANO: We're adjourned.

19 MR. POPE: Did you waive --

20 THE WITNESS: I waive.

21 MR. POPE: -- reading and signing?

22 MR. CATALANO: No signing. We're old.

23 You don't remember the new rule.

24 THE WITNESS: Just read or waive.

25 (Thereupon, this deposition was

1 concluded @ 5:52 p.m. Reading and signing
2 were waived.)

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STIPULATION

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It is hereby stipulated by and between counsel
for the respective parties and the witness that the
reading and signing of the foregoing deposition and notice
be, and the same are, hereby waived.

7

AND FURTHER DEPONENT SAITH NOT

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